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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

THUAN-VU D HO,

Debtor.

**Case No. 14-50354 ASW-7
Chapter 7**

**KARI SILVA BOWYER, Trustee
of the Bankruptcy Estate of
Thuan-Vu D Ho,**

Plaintiff,

vs.

**LUU PHUONG NGUYEN aka
LUUPHUONG NGUYEN, BAO QUOC
NGUYEN and MINH DUC T. LUU,
Defendants.**

**ADVERSARY PROCEEDING
NO. 14-05039**

**EX PARTE APPLICATION FOR
ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

**Date:
Time:
Place: 280 South First St.
San Jose, California
Judge: Hon. Arthur S. Weissbrodt**

Plaintiff, Kari Silva Bowyer, Trustee in bankruptcy of the
estate of the above Debtor ("Plaintiff"), hereby submits this *Ex*
Parte Application for Order Granting Temporary Restraining Order:

Ex Parte Application For Order
Granting Temp. Restraining Order

1 Through this Application, Plaintiff seeks an order temporarily
2 restraining the above-named Defendants from taking any action to
3 transfer, hypothecate or otherwise use or distribute any of the
4 remaining proceeds from the sale of the real property located at
5 3482 Lapridge Lane, San Jose, California ("the Real Property")
6 pending resolution of the above-captioned adversary proceeding.
7 This is of great concern to Plaintiff based upon Defendant
8 Luuphuong Nguyen stating that she and her parents are scheduled to
9 leave on trip to Vietnam on May 2, 2014, and that they had intended
10 on taking some of the proceeds from the sale of the Real Property
11 with them.

12
13 Plaintiff asserts the Real Property was a community property
14 asset Debtor transferred to defendant, Luu Phuong Nguyen aka Luu
15 phuong Nguyen ("Luuphuong") for no value, or less than reasonably
16 equivalent value, less than one (1) year of the Debtor filing his
17 bankruptcy case on January 30, 2014. A copy of the Interspousal
18 Transfer Grant Deed by which Debtor transferred the Real Property
19 to Luuphuong is attached as Exhibit A to the Declaration of Marlene
20 G. Weinstein ("Ms. Weinstein").

21
22 Although filing an adversary proceeding and recording a lis
23 pendens to recover the Real Property for the benefit of the estate
24 would generally be sufficient to protect the estate's interest in
25 the Real Property, Luuphuong has since sold the Real Property,
26 netting a minimum of \$330,000.00 ("the Proceeds of Sale"), from
27 which Luuphuong contends there is only about \$100,000.00 remaining
28 as of this date. Plaintiff, therefore, had no other option other

1 than to initiate this adversary proceeding and to file the within
2 application requesting injunctive relief so that she can take steps
3 to protect the estate's interest in the Proceeds of Sale remaining
4 as of this date ("Remaining Proceeds of Sale").

5
6 **FACTS**
7

8 On January 30, 2014, the above Debtor filed a voluntary
9 petition for relief under Chapter 7 of the Bankruptcy Code, and
10 Plaintiff was appointed Chapter 7 Trustee.
11

12 On April 15, 2014, in connection with preparing a Complaint to
13 Avoid Fraudulent Transfer, For an Accounting and Turnover of
14 Property of the Estate, For Authority to Sell Interest of Co-Owner
15 and For Declaratory Relief, Plaintiff discovered that the Real
16 Property had been sold on April 4, 2014, for \$950,000.00. A copy
17 of the first page printout from the Zillow website regarding the
18 sale the Real Property and of the Grant Deed recorded April 4, 2014
19 evidencing the sale by Luuphuong are attached as Exhibits B and C,
20 respectively, to the Declaration of Marlene G. Weinstein.
21

22 Plaintiff initiated this adversary proceeding based upon
23 Debtor's transfer of the Real Property to Luuphuong within one (1)
24 year of the filing of the Bankruptcy Case, which property was
25 purchased during the Debtor's marriage to Luuphuong. Plaintiff
26 contends the Real Property and the Proceeds of Sale therefrom were
27 and are community property that is recoverable for the benefit of
28 the estate under 11 U.S.C. §548. A copy of the complaint, without

1 exhibits, is attached as Exhibit D to the Declaration of Marlene G.
2 Weinstein.

3
4 On April 15, 2014, Ms. Weinstein telephoned Luuphuong
5 regarding Plaintiff's contentions regarding the Real Property and
6 the Proceeds of Sale at which time Luuphuong confirmed the fact the
7 Real Property had sold for \$950,000.00, and further, that the
8 mortgage paid off in connection with the sale was less than
9 \$500,000.00. When asked about the remaining Proceeds of Sale,
10 Luuphuong advised Ms. Weinstein that she had spent some money and
11 paid off debts and that only about \$100,000.00 of the Proceeds of
12 Sale remained.

13
14 During the course of the conversation with Ms. Weinstein,
15 Luuphuong asserted that the Real Property was always her separate
16 property and that Debtor did not have any interest in the Real
17 Property. In response, Ms. Weinstein advised Luuphuong that until
18 she provided evidence and either an agreement was reached or there
19 was an order from the Bankruptcy Court, she should not spend any of
20 the Remaining Proceeds of Sale.

21
22 Following the conversation, Ms. Weinstein sent Luuphuong an
23 email, a copy of which is attached as Exhibit E to the Declaration
24 of Marlene G. Weinstein, which stated the following:

25 IN ANY EVENT, THIS LETTER WILL SERVE TO ADVISE YOU THAT
26 YOU MUST NOT SPEND ANY FURTHER PROCEEDS FROM THE SALE OF
27 THE LAPRIDGE LANE PROPERTY UNTIL FURTHER AGREEMENT OR AN
28 ORDER OF THE BANKRUPTCY COURT.

1 On April 16, 2014, pursuant to previous agreement, Ms.
2 Weinstein had a further telephone conversation with Luuphuong in
3 which Luuphuong advised Ms. Weinstein that she had transferred
4 \$150,000.00 of the Proceeds of Sale to her parents, defendants Bao
5 Quoc Nguyen and Minhdud T. Luu ("Parents"), in repayment of a loan
6 for the down payment for the purchase of the Real Property and that
7 she had access to her parents' accounts. Luuphuong also stated she
8 had used \$70,000.00 to pay off her student loan and had used about
9 \$10,000.00 to pay off her car loan. Luuphuong further stated she
10 and her parents were scheduled to take a trip to Vietnam on May 2,
11 2014, at which time she intended to take some of the Remaining
12 Proceeds of Sale with her.

13
14 At the end of Ms. Weinstein's conversation with Luuphuong on
15 April 16, 2014, Luuphuong discussed providing documents she believed
16 evidenced her separate property claim and tentatively scheduled to
17 meet with Ms. Weinstein on Friday, April 18, 2014. Luuphuong
18 further agreed to call Ms. Weinstein later in the afternoon on
19 April 16, 2014 when she returned home from work. Ms. Weinstein
20 provided Luuphuong with her private line in case Luuphuong had to
21 call after 5:00 p.m. Although seemingly cooperative, Luuphuong has
22 not agreed to turn over the remaining proceeds of sale pending
23 resolution of the dispute. In addition, she did not call Ms.
24 Weinstein as had been planned and she did not answer her cel phone
25 when Ms. Weinstein attempted to call her at 6:25 p.m. and at 7:30
26 p.m. on April 16, 2014 before the within Application was finalized.

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1 ARGUMENT

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3 Legal Standard for a Preliminary Injunction

4 The standards for issuance of a preliminary injunction in this
5 jurisdiction are well established. As stated by the Ninth Circuit
6 in Glacier Park Foundation v. Watt, 663 F.2d 882, 884 (9th Cir.
7 1981):

8 A preliminary injunction should be granted if the movant
9 can show either: (1) probable success on the merits and
10 the possibility of irreparable injury, or (2) that
11 serious questions are raised and the balance of hardships
tips sharply in the movant's favor.

12 Id.; see also Oakland Tribune, Inc. V. Chronicle Publishing
13 Company, Inc., 762 F.2d 1374, 1376 (9th Cir. 1985). The two tests
14 are not separate tests; rather, they represent "two points of a
15 sliding scale in which the required degree of irreparable harm
16 increases as the possibility of success decreases." Oakland
17 Tribune, 763 F.2d 1376.

18
19 1. Likelihood of Success on the Merits.

20 Plaintiff believes she will succeed in the adversary
21 proceeding against Luuphuong and her Parents (collectively
22 "Defendants"). There can be no dispute that the bankruptcy estate
23 has some interest in the Real Property in that it was purchased
24 during Debtor's marriage to Luuphuong, that community property
25 earnings acquired during marriage were used to make mortgage
26 payments, and that there was some community interest in the Real
27 Property Debtor transferred. In this case, success on the merits
28 would be reflected in preservation of the estate's interest in the
Proceeds of Sale from which only a small percentage remains.

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The Real Property was sold on April 4, 2014, and within slightly over ten (10) days Luuphuong has transferred at least \$230,000.00 (and likely more). If a restraining order is not granted, there is no guarantee that the Remaining Proceeds of Sale will not be transferred, hypothecated or otherwise spent by Defendants. There is a real possibility of irreparable harm to Plaintiff and the bankruptcy estate which would result in the loss of the Remaining Proceeds of Sale by Defendants' possible actions.

Plaintiff submits that this is a proper case for injunctive relief to protect a valuable asset of the bankruptcy estate. Plaintiff requests that the Court enter a temporary restraining order preventing the Defendants from taking any action to transfer, hypothecate or otherwise use or distribute any of the Remaining Proceeds of Sale from the sale of the Real Property.

LAW OFFICE OF MARLENE G. WEINSTEIN

Ex Parte Application For Order
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